

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

DECEMBER 6, 1999

IN RE:)	
)	
PETITION OF HYPERION COMMUNICATIONS OF)	DOCKET NO. 98-00732
TENNESSEE, L.P. FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO PROVIDE)	
FACILITIES-BASED AND RESOLD LOCAL)	
EXCHANGE AND RESOLD INTEREXCHANGE)	
TELECOMMUNICATIONS SERVICES)	
THROUGHOUT THE STATE OF TENNESSEE)	
)	

**ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

On September 15, 1999, this matter came before the Tennessee Regulatory Authority ("Authority"), upon the Petition of Hyperion Communications of Tennessee, L.P. ("Hyperion") for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange and Resold Interexchange Telecommunications Services throughout the State of Tennessee to offer a full array of telecommunications services within the State of Tennessee (the "Petition"). The Petition was submitted pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

LEGAL STANDARD FOR GRANTING CCN

Hyperion's Petition was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

FILE

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications

businesses; and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc., and Tennessee Telephone Company (the "Intervenors") intervened prior to the hearing.

HYPERION'S HEARING

Hyperion's Petition was not contested during the hearing held on September 15, 1999. At the hearing, Hyperion was represented by Mr. Michael Bressman of Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219. In addition, Mr. Phillip M. Fraga, Hyperion's Director of Legal and Regulatory Affairs, presented testimony and was subject to examination by the Authority's Directors. Mr. R. Dale Grimes, Esq., of Bass, Berry & Sims PLC, 2700 First American Center, Nashville, Tennessee 37238, counsel for the Intervenors, made an appearance and a brief statement on behalf of the intervenors but did not participate in the hearing. Upon Hyperion's conclusion of proof in its case, the Authority granted Hyperion's Petition based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. Hyperion is a limited partnership organized under the laws of the State of Delaware on July 17, 1998 and became qualified to transact business in Tennessee on August 18, 1998.

2. The complete street address of Hyperion's principal place of business is DDI Plaza Two, 500 Thomas Street, Suite 400, Bridgeville, Pennsylvania 15017-2838. The phone number is (412) 221-1888 and fax number is (412) 221-6642. Hyperion's counsel are Michael Bressman, Boulton, Cummings, Conners & Berry, PLC, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219, and Dana Frix and Jonathan Draluck, Swidler Berlin Shereff Friedman, LLP, 3000 K Street, Suite 300, Washington, D.C. 20007.

3. The Petition and supporting documentary information existing in the record indicate that Hyperion has the requisite technical and managerial qualifications necessary to provide telecommunications services within the State of Tennessee on a facilities-based and resale basis. Specifically, Hyperion's management and technical teams have extensive experience in the telecommunications industry. Hyperion's parent company and affiliated companies are leading providers of integrated local telecommunications services over state-of-the-art fiber optic networks throughout the United States. These affiliated networks serve 20 geographic markets and 46 cities, with more than 6,000 route miles of fiber. Hyperion's affiliates have been authorized to provide a full array of telecommunications services in numerous states.

4. Hyperion has the necessary capital and financial qualifications to provide the services it proposes to offer.

5. Hyperion has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. PROPOSED SERVICES

1. Hyperion intends to offer a full array of telecommunications services throughout the State of Tennessee on a facilities-based and resale basis. Specifically,

Hyperion intends to offer a broad range of local exchange, interexchange, exchange access, and switched and special access services. Hyperion proposes to serve business and residential customers.

2. Except as may be authorized by law, Hyperion does not intend to provide local exchange service in any areas currently being served by an incumbent local telephone company with fewer than 100,000 total access lines where local exchange competition is prohibited pursuant to Tenn. Code Ann. § 65-4-201(d).

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the Petition and the record in this matter, the Authority finds that approval of Hyperion's Petition would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

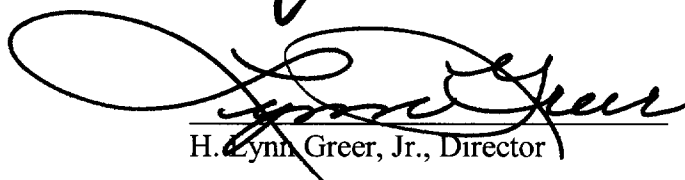
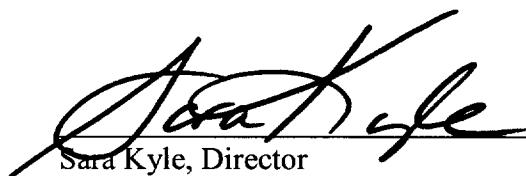
IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

1. Hyperion has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. Hyperion has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. Hyperion Communications of Tennessee, L.P.'s Petition is approved.
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.
3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


Melvin Malone, Chairman
H. Lynn Greer, Jr., Director
Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary